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Letter dated 27 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 13 November 2002 (S/2002/1258).

The Counter-Terrorism Committee has received the attached third report from the Democratic Socialist Republic of Sri Lanka submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 13 August 2003 from the Permanent Representative of Sri Lanka to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to refer to your letter of 30 October 2002 and to transmit herewith the supplementary report of the Government of Sri Lanka on steps taken to implement Security Council resolution 1373 (2001) (see enclosure).*

A copy of the Mutual Legal Assistance in Criminal matters Act No. 25 of 2002 as referred in paragraph 10.1 will be sent to you in due course of time.

(*Signed*) C. **Mahendran**
Ambassador
Permanent Representative

* Annexes are on file with the Secretariat and are available for consultation.

Enclosure

Response of the Government of Sri Lanka to questions raised by the UN Counter Terrorism Committee (CTC) – 30th October 2002

Further to its submissions dated 26th December, 2001 and 15th July 2002, and in response to the letter of the Chairman of the Counter Terrorism Committee (CTC) dated 30 October 2002, the Government of Sri Lanka wishes to make the following response:

1.2 Technical Assistance was sought by the Central Bank of Sri Lanka from the International Monetary Fund (IMF) to finalise legislation for the prevention of money laundering and to combat financing of terrorism. Accordingly, the draft Prevention of Money Laundering Act and the draft Convention on the Suppression of Terrorist Financing Act that were being finalized by the relevant Ministries were sent to the IMF, and in June 2003, a legal expert from the IMF, Mr. Ross Delston, visited Sri Lanka for period of one week, for consultations with the relevant Government Ministries/Departments and Agencies.

Mr. Delston held several meetings with a Working Group of Senior Officials of the Ministry of Foreign Affairs, Ministry of Finance, Ministry of Justice and of the Central Bank. Mr. Delston's comments on the draft laws were discussed at the Meetings of the Group and it was agreed that a recommendation will be made to the Government to introduce legislation as a package of three substantive laws i.e.

(a) an Act to combat money laundering which would define and criminalise money laundering, provide for freezing of assets pending investigation and confiscation of assets upon conviction.

Provisions in the existing draft law relating to the Anti Money Laundering Authority and reporting requirements will be moved out. Provisions relating to mutual assistance will also be moved out; as a separate law will be introduced for the purpose. (See (c) below)

(b) an Act to give effect to the International Convention on the Suppression of Financing of Terrorism which would define and criminalise financing of terrorist acts and terrorist organizations, and provide for such matters as freezing of assets pending investigation, for confiscation of assets upon conviction, extradition or prosecution and for vesting of extra-territorial jurisdiction in local courts, in respect of offences under the Convention.

(c) a Financial Transactions Reporting Act to support the above two Acts.

This law will provide for the establishment of a Financial Information Unit (FIU), impose obligations on "covered institutions" to exercise customer due diligence and to maintain records, and require reporting of financial transactions to the FIU. The law will also provide for penalties for non compliance.

In the light of the above decisions, the draft Prevention of Money Laundering Act and the draft Convention on the Suppression of Terrorist Financing Act are being revised, and a Financial Transactions Reporting Act is being prepared. (The IMF expert has provided a preliminary draft law based on the Commonwealth Secretariat's Model Law).

1.3 The Exchange Control Act would be resorted to as an interim measure, pending the enactment of specific legislation. The new law on Suppression of Terrorist Financing will incorporate the requirements of Resolution 1373 and would cover the 3 points highlighted in Para. 1.3 of the Section containing questions on implementation measures. It would also cover the activities mentioned in Paragraph 1 of Resolution 1373.

1.4 The proposed law on Suppression of Terrorist Financing will incorporate provisions dealing with freezing of funds and assets suspected of being or intended for use in support of terrorism in the Terrorist Financing Convention.

1.5 Regulation 6 of the United Nations Regulation No. 1 of 2001 envisages that, where reasonable suspicion exists that any funds, financial assets or resources are intended towards the facilitation or commission of any terrorist act, such funds, financial assets or resources shall be frozen. No judicial determination is required for such freezing. However, if such act is proved before a Court of Law (in this case the High Court of Colombo) such funds etc. will be forfeited. In the circumstances, no amendment to Regulation No. 6 is deemed necessary. Further elaboration of this aspect will be effected in the context of the proposed new legislation.

1.6 In addition to the special surveillance unit established in the Exchange Control Department, matters dealing with the establishment and operation of NGOO fall within the purview of other Agencies of the Government such as the NGO Secretariat, Ministry of Policy Development & Implementation and the Ministry of Social Services. All NGOO are required to be registered under the NGC Secretariat. The monitoring of transfer of assets within Sri Lanka would be carried out by the NGO Secretariat.

1.7 The Regulations made under the U.N. Act make it an offence for "any person" who knows or has reasonable cause to believe that any person has committed an offence under the regulations or is making preparations or is attempting to commit an offence under the Regulations to fail to report the same to the Police. Failure to report any information in a person's possession relating to the movements or whereabouts of a person who has committed an offence under the regulations or is making preparations or is attempting to commit an offence under the regulations is also an offence.

Instructions have been issued to banks and finance companies by the relevant supervisory authority and to authorized money changers, authorized travel agents and money transmission service providers by the Controller of Exchange to comply strictly with the requirements of the regulations.

The **preliminary draft** of the Financial Transactions Reporting Act (draft FTRA) deals with reporting requirements more comprehensively. It will require reporting by "financial institutions" of all transactions above a prescribed threshold, and of suspicious transactions. It will also provide (without limiting) guidelines for identifying a suspicious transaction.

The guidelines (non exhaustive) for determining whether a transaction is "suspicious" include the frequency of transactions, the value of each transaction and the aggregate value of transactions, the period of time over which transactions take place, the locations at which transactions are initiated or conducted, and unusual patterns of transactions.

"Covered institutions" are also required to take into account any explanations of transactions given by a customer.

The draft FTRA defines the term "covered institutions" to include all types of financial service providers (including money transmission service providers) as well as lawyers and accountants when acting for a financial purpose or as broker, and persons dealing in precious goods such as antiques and gem stones. Provisions relating to customer due diligence, maintenance of records and reporting will apply to all covered institutions.

The draft law provides that failure to comply with a requirement to report will be punishable in the case of an individual with a fine and/or imprisonment and in the case of a body corporate with a fine. The specific value of fines/terms of imprisonment are under consideration.

It must be emphasized that the draft law referred to above is still in the preliminary stages of preparation and may undergo changes before finalisation.

1.8 Obligations devolving on Sri Lanka to prevent the use of its territory for hostile purposes against other States would not be dealt with under the provisions of the Prevention of Terrorism (Temporary Provisions) Act. Such transnational aspects will be dealt within the proposed Suppression of Terrorist Financing Act. Sri Lanka is also a signatory to the Palermo Convention and the Protocols and necessary amendments to existing legislation are being effected and new legislation to give effect to the obligations under the Convention and its Protocols is in the process of preparation.

1.9 No legislation exists at present dealing with the prevention of recruitment to terrorist groups outside Sri Lanka. No amendment to the Prevention of Terrorism Act is envisaged in this regard.

1.10 Mutual Legal Assistance in Criminal Matters Act No. 25 of 2002 is now in force and provides a comprehensive legal framework for the rendering of assistance in criminal matters, including:

(a) the location and identification of witnesses or suspects;

(b) the service of documents;

(c) the examination of witnesses;

(d) the obtaining of evidence, documents or other articles;

(e) the execution of requests for search and seizure;

(f) the effecting of a temporary transfer of a person in custody to appear as a witness;

(g) the facilitation of the personal appearance of witnesses;

(h) the provision of documents and other records;

(i) the location of the proceeds of any criminal activity;

(j) the enforcement of orders for the payment of fines or for the forfeiture of freezing of property.

Consequent to the coming into operation of the Act, Sri Lanka has also negotiated Bilateral Agreements on Mutual Legal Assistance in Criminal Matters with Hong Kong Special Administrative Region and the Russian Federation. Further bilateral negotiations in this field are also envisaged. Action is also being taken to gazette the Designated Commonwealth Countries to which the Act applies.

A copy of Act No. 25 of 2002 is attached.

1.11 The Immigration Act is now in its final stages of preparation prior to submission to Parliament. It is directed, inter alia, towards providing for the prohibition of the smuggling of persons from Sri Lanka through, inter alia, creation of a substantive offence of human smuggling. It also provides for enhanced penalties for "operators" who are behind human smuggling and vests local courts with extra-territorial jurisdiction. Sri Lanka sees its relevance to the provisions of S.C. Resolution 1373 in the light of its own experience, where human smuggling operations particularly to European countries have provided a ready reservoir for fund raising by terrorist groups and front organizations. Such activities take place, through extortion, directly from victims of human trafficking, as well as from their next of kin and relatives who are left behind in Sri Lanka.

In this connection, Sri Lanka also wishes to bring to the attention of the CTC the continuing suspected arms smuggling into Sri Lanka by armed groups particularly, from European and South East Asian countries, through the involvement of arms dealers. Six such incidents of unlawful arms smuggling into the country have been detected by the Sri Lanka Naval Authorities since April 2002. Apart from the

serious threat it poses to national security, such incidents also have an adverse effect on the on-going peace process in Sri Lanka. It is therefore imperative that States should strictly comply with their obligations under Paragraph 2 (a) of Resolution 1373 by taking effective measures to eliminate the supply of weapons to terrorists.

1.12 The Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms are the only two Conventions in the field of suppression of terrorism not yet subscribed to by Sri Lanka. However, possible accession thereto is currently under consideration.

2. **Assistance and Guidelines**:

2.1 Under IMF assistance schemes, Sri Lanka has requested training assistance for bankers and bank supervisors. These matters were raised with the IMF expert during his recent visit. Sri Lanka would however like to flag its request with the CTC in order to obtain assistance in training officers of the proposed Financial Intelligence Unit (FIU) which is imperative for its effective functioning.

3. **Submission of further Report**:

Sri Lanka would readily assist the CTC at any future stage of its work and will also keep the CTC informed of all relevant developments regarding the implementation of Resolution 1373 by the Government of Sri Lanka.